IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE

WRIT PETITION NO.8940 OF 2003
AND
WRIT PETITION NO.8941 OF 2003

WRIT PETITION NO.8940 OF 2003

Annasaheb Nana Deshmukh,)
since deceased by heir:-)
Smt.Savitri Annasaheb Deshmukh,)
Resident of Kasba Kodoli,)
Taluka - Panhala, Dist. Kolhapur.).. Petitioner.

Vs.

1. The Special Land Acquisition)
Officer No.12, Kolhapur.)

2. The Commissioner,)
Pune Division, Pune.)

3. The Deputy Director of)
Resettlement Revenue & Forest)
Department, Govt.of Maharashtra)
Mantralaya, Mumbai 400 032.)

4. The State of Maharashtra.).. Respondents

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Shri V.B.Rajure for the Petitioner.

Shri V.S.Gokhale, AGP for respondents.

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WITH

WRIT PETITION NO.8941 OF 2003

Nirmala Babasaheb Deshmukh,)
Resident of Kasba Kodoli,)
Taluka Panhala, Dist.Kolhapur.).. Petitioner

Vs.

1. The Special Land Acquisition)
Officer No.12, Kolhapur.)

2. The Commissioner,)
Pune Division, Pune.)

3. The Deputy Director of)
Resettlement Revenue & Forest)
Department, Govt.of Maharashtra)
Mantralaya, Mumbai 400 032.)

4. The State of Maharashtra.).. Respondents
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Shri V.B.Rajure for the petitioner.

Shri V.S.Gokhale, AGP for respondents.
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CORAM : R.M.S.KHANDEPARKAR &
V.M.KANADE, JJ.

DATED : 28TH SEPTEMBER, 2005.

ORAL JUDGMENT : (Per V.M.Kanade, J)

1. The petitioners in both these petitions are challenging the acquisition proceedings initiated by the Special Land Acquisition Officer under the provisions of Maharashtra Resettlement of Project Affected Persons Act, 1969, hereinafter called as "the Resettlement Act" read with the provisions of the Land Acquisition Act, 1894, hereinafter called as "the said Act".

2. The only grievance of the petitioners in these

petitions is that though the holding of the petitioners is less than 8 acres of land, the Divisional Commissioner, Pune Division, Pune, has taken into consideration the material which was not on record and which was subsequently obtained after hearing was concluded and on the basis of the extraneous material, he was pleased to reject the appeals which were filed by the petitioners in both these petitions.

3. We have perused the impugned orders passed by the Divisional Commissioner, Pune Division, Pune. In his order, the Divisional Commissioner has specifically mentioned that learned counsel appearing on behalf of the petitioners and the respondents were heard on 1st April, 2002. In the final conclusion however after recording the submissions made by learned counsel for the petitioners, the Commissioner in the findings which are recorded by him has relied on the inspection report submitted by his officer dated 8th April, 2003. The learned AGP appearing on behalf of the State fairly conceded that the report of subsequent inspection, which was held behind the back of the petitioners herein, was neither made available to the petitioners nor the petitioners were informed that the Commissioner was going to take the said

subsequent inspection report into consideration while deciding the appeals. Obviously, the impugned orders, therefore, are based on certain materials, due notices of which should have been given to the petitioners. On account of this lacuna, the entire order will have to be set aside.

4. In the result, both the petitions are allowed. The impugned orders dated 13th June, 2003 passed by the Divisional Commissioner, Pune Division, Pune, are hereby quashed and set aside. The matters are remanded back to the Divisional Commissioner, Pune Division, Pune, with a direction to supply copies of the inspection report and/or any other material on which reliance is sought to be placed by the Land Acquisition Officer and after giving personal hearing to the petitioners, shall decide the appeals afresh as expeditiously as possible and in any case within a period of six months from today. Interim order of status quo to continue pending final disposal of the said appeals by the Divisional Commissioner. If any order passed by the Divisional Commissioner, Pune Division, Pune, happens to be adverse to the interest of the petitioners, the same shall continue to operate for a period of four weeks from the date of service of the order to be passed by the Divisional Commissioner,

Pune Division, Pune, on the petitioners herein.

(V.M.KANADE, J) (R.M.S.KHANDEPARKAR, J)